authority to refer the dispute to the Industrial Court under section 16A, but whether or not at the material time he had authority under the *law* to make the reference.

With respect we agree with the appellant's contention as to the real issue, and with his further submission that the Minister did have authority to make the reference under section 23(1) and (2) of the Act (now section 26(1) and (2) of the Revised Act).

It is now necessary to reproduce that section and the letter on behalf of the Minister referring this dispute to the Industrial Court.

The section reads:

"(1) Where a trade dispute exists... the Minister may, if that dispute is not otherwise resolved, refer the dispute to the court on the joint request in writing to the Minister by the trade union representing the workmen who are parties to the dispute and the employer who is a party to the dispute or a trade union representing the employer.

(2) The Minister may of his own motion refer any dispute to the court if he is satisfied that it is expedient in the public interest so to do...."

The letter dated August 29, 1975, reads:

"*Dismissal of [the appellant] from [the estate].*

I am directed to draw your attention to the above matter and to say that an investigation under section 16A of the Industrial Relations Act, 1967, has been carried out but without bringing about a settlement. The union and management have agreed that the matter be referred to the Industrial Court.

2. The Minister of Labour and Manpower agrees that the matter be referred to the Industrial Court under section 16A(9) of the Industrial Relations Act, 1967, for settlement.

OSMAN BIN HAJI HASSAN
for the Secretary-General, Ministry of Labour and Manpower."

Without doubt the appellant was a "workman" (as defined by section 2), there was a "trade dispute" (as defined by the same section) between him and his company and that dispute had not been resolved. The second sentence of the Ministry's letter says that the union and management have agreed that the matter be referred to the Industrial Court. In view of this, there seems little doubt that there must have been a joint request in writing to the Minister by the union and employer that this dispute be referred to the Industrial Court. Therefore in our judgment this reference falls squarely within subsection (1) of section 23.

In any event, there is not the slightest doubt that it can fall squarely within subsection (2) of the same section, which in the clearest term provides that the Minister may of his own motion refer any trade dispute, which this was, to the court if he is satisfied that it is expedient to do so. This subsection does not require a request, joint or otherwise, from anybody.

In our judgment, what matters is whether or not the Minister has power to refer this dispute to the Industrial Court, not whether or not the right section has been cited in his letter of reference. If he has the power under one section but the letter mentions the wrong section under which he purports to act, that does not affect the validity of the reference.

So for the above reasons we would allow this appeal. Accordingly we set aside the learned judge's order and we order that this matter be remitted to the High Court for it to deal with the originating motion proper on the basis that the Minister's reference was valid and that the Industrial Court was vested with jurisdiction to hear and determine the dispute.

Costs of this appeal and below to the appellant. His deposit to be refunded to him.

Appeal allowed.

Solicitors: *D.P. Xavier & Co.; Shearn Delamore & Co.*

PERTAMA CABARET NITE CLUB SDN. BHD. v. ROMAN TAM

[F.C. (Suffian L.P., Abdul Hamid F.J. & Mohamad Azmi J.) December 11 & 12, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 280 of 1980]

Practice and Procedure — Application for interim injunction — Alleged breach of contract for personal appearance to sing — Undertaking not to sing elsewhere in Kuala Lumpur — Whether damages adequate remedy — Defendant not a resident of Malaysia — Interim injunction granted.

Contract — Alleged breach of contract for personal appearance to sing — Whether damages adequate remedy — Defendant not a resident of Malaysia — Interim injunction granted — Specific Relief Act (Act 137), s. 55.

In this case the appellants alleged that the respondent, a well-known singer from Hongkong, had signed a contract agreeing to appear and sing at the appellant's night club for a number of days. It was a term of the agreement that in the event of breach, the respondent would not be entitled to perform in Kuala Lumpur during the period fixed in the contract or three months thereafter. It appeared that the respondent declined to honour his contract and was singing at another night club. The appellants claimed an injunction and damages and applied for an interim injunction to restrain the defendant from appearing at any opera, theatre, concert hall or other public or private entertainment in Kuala Lumpur until the hearing of the summons. The learned trial judge refused the application and the appellant appealed to the Federal Court.

Held: in this case the respondent was not a resident of this country and it was unrealistic to suppose that the appellants would be sufficiently compensated by money damages alone. In the circumstances the interim injunction applied for should be granted.

Cases referred to:-

(1) *Hampstead and Suburban Properties Ltd.* v. *Diomedous* [1968] 3 All E.R. 545.

(2) *Lumley* v. *Wagner* (1852) 1 De G.M. & G. 604; 42 E.R. 687; 91 R.R. 193.

(3) *Broome (Selangor) Rubber Plantations* v. *R.H. Whitley* [1919] 1 F.M.S.L.R. 365.

The following case was also cited in argument: *Warner Brothers Pictures Inc.* v. *Nelson* [1936] 3 All E.R. 160.

K.Y. Chew for the appellants.

Respondent not represented.

Suffian L.P. (delivering the judgment of the Court): We allowed this appeal and now give our reasons.

The plaintiffs run a night club in Kuala Lumpur, the Pertama Cabaret Nite Club. According to their affidavit, on September 30, 1980, the well-known singer from Hongkong known as Roman Tam, defendant,

through his agent in Malaysia, signed a contract agreeing to appear and sing at the plaintiffs' night club for nine days from November 28, 1980 and ending on December 6, 1980. According to copy of the agreement exhibited, the plaintiffs agreed to pay the defendant US$2,400 a day, plus expenses and Government tax.

The plaintiffs made all the necessary arrangements to enable the defendant to come and sing in the plaintiffs' night club, including the procurement of clearance by the Ministry of Youth, Culture and Sports, all immigration papers, a professional visa and the supply of air tickets.

Subsequently the plaintiffs' entertainment manager Mr. K.S. Wong heard from the defendant's agent that the defendant might not appear at the plaintiffs' night club unless offered higher remuneration. So Mr. Wong telephoned the defendant in Kowloon, Hongkong, on November 26 to tell him that all arrangements had been finalized and his air tickets, visa, etc. were ready. On November 28 at about 7.30 p.m. Mr. Wong went to Subang airport to meet the defendant, but he was nowhere to be found.

It later transpired that the defendant had declined to honour his contract to sing at the plaintiffs' night club and was, we were told from the Bar, singing at another night club in Kuala Lumpur, the Shangri-la.

Now, by clause 15 of the contract it was provided that misconduct by the defendant or breach of any of the terms of the agreement shall entitle the plaintiffs to terminate the contract; and that in the event of such termination the defendant shall not be entitled to perform in Kuala Lumpur during the period fixed in the contract or three months thereafter; and there are provisions for compensation to be paid by the defendant to the plaintiffs.

On December 5, the plaintiffs issued a writ against the defendant claiming an injunction and damages, and on the same day the plaintiffs took out a summons in chambers applying *ex parte,* for an interim injunction to restrain the defendant from appearing "at any opera house, theatre, concert hall or other public or private entertainment in Kuala Lumpur" until the hearing of the summons.

Events moved fast, for on December 8 the summons came up in chambers before the learned judge, who on the same day refused to grant the application, which refusal he confirmed in open court two days later.

In a brief oral judgment he gave his reason for refusing the application. He said that the main ground upon which the application was made was that irreparable harm and damage had been suffered by the plaintiffs through the loss of their reputation as a reputable night club, but that he was not satisfied that damages would not be an adequate remedy, if indeed the defendant had committed a breach of contract.

The plaintiffs appealed from the decision of the learned judge. On December 11 when the matter came up before us, we allowed the appeal, set aside the learned judge's order, and, on the plaintiffs undertaking to pay damages should the case go against them, ordered the interim injunction to issue, restraining the defendant for a period of three months from date of breach of contract on November 28, 1980, plus nine days; but at the same time we gave the defendant liberty to apply within 14 days of the service on him of the interim injunction to have the interim injunction set aside; costs here and below to be costs in the cause.

It is to be emphasized that we were not at this stage concerned with the merits of the dispute between the plaintiffs and defendant; all we were concerned with was the *ex parte* application by the plaintiffs that an interim injunction should issue to restrain the defendant from singing or performing anywhere in Kuala Lumpur.

It is true that generally speaking an injunction will be refused where money damages will be adequate, and that usually damages only will be given instead of an injunction where, as stated by *Pollock and Mulla* on the Indian Contract and Specific Relief Acts, ninth edition, page 958,

> "(i) injury to plaintiff's right is small; (ii) is one capable of being estimated in money; (iii) is one which is capable of being compensated by a small money payment; (iv) and the case is one in which it would be oppressive to the defendant to grant an injunction."

But here the defendant is not a resident of this country, he has signed a contract to sing for the plaintiffs on certain dates; as a professional singer he visits this country but briefly, probably flitting in and out; and once he has departed it is likely that he will not return for the pleasure of fighting a lawsuit. So it is unrealistic to suppose that the plaintiffs will be sufficiently compensated by money damages alone, for the truth is that they might not even get one cent. Failure by the courts to issue an interim injunction will create a bad precedent for other international singers, who will be able to contract to sing with one night club here and then blatantly flout it by singing at another instead.

We might have been reluctant to restrain the defendant if he had been a resident of and with assets in this country — for then it would have been realistic to suppose that money damages might be enough to sooth the plaintiffs' injured feeling.

In *Hampstead and Suburban Properties Ltd.* v. *Diomedous,*[1] Megarry J., dealing with an application for an interim injunction before trial, observed at page 550:

> "Where there is a plain and uncontested breach of a clear convenant not to do a particular thing, and the convenantor promptly begins to do what he has promised not to do, then in the absence of special circumstances it seems to me that the sooner he is compelled to keep his promise the better. In such a case I do not think that the enforceability of the defendant's obligation falls into two stages, so that between the issue of the writ and the trial the defendant will be enjoined only if that is dictated by the balance of convenience and so on . . . I see no reason for allowing a convenantor who stands in a clear breach of an express prohibition to have a holiday from the enforcement of his obligation until the trial. It may be that there is no authority on this point; certainly none has been cited. If so, it is high time that there was such authority; and now there is."

Finally, it is to be observed that the defendant's

undertaking to sing is an affirmative agreement which in the ordinary way the court will not compel him to perform, the undertaking being dependent on his personal qualification and volition; but side by side with this affirmative undertaking the defendant has also given a negative undertaking not to sing anywhere else in Kuala Lumpur for a certain period: and under section 55 illustration (c) of the Specific Relief Act, Act 137, the circumstance that the court is unable to compel specific performance of the affirmative agreement does not preclude the court from granting an injunction to compel performance of the negative undertaking, if the plaintiff has not failed to perform the contract so far as it is binding on him. In our view this case falls squarely within this section and within the cases of *Lumley* v. *Wagner*[2] and *The Broome (Selangor) Rubber Plantations* v. *R.H. Whitley*,[3] cited to us.

To remove any doubt, we state that should this matter come up again before the learned judge on application by the defendant, the learned judge will be free to set aside the interim injunction which we ordered be issued, and he will no doubt be advised by counsel as to the principles which he should observe in exercise of his discretion.

Appeal allowed.

Solicitors: *Chew & Co.*

EAST UNION (MALAYA) SDN. BHD. v. GOVERNMENT OF THE STATE OF JOHORE & GOVERNMENT OF MALAYSIA

[F.C. (Suffian L.P., Wan Suleiman F.J., Syed Othman F.J., Abdul Hamid F.J. & Hashim Yeop A. Sani J.) October 23, 24 & December 12, 1980]

[Kuala Lumpur — Federal Court Suit No. 1 of 1980]

Constitutional Law — Legislation enacted by Federal Parliament on land — Whether ultra vires the Federal Constitution — Whether legislation ensures uniformity of law and policy — Collection of revenue — Pith and substance — Land tenure — Validity of law — Exclusive jurisdiction of Federal Court — National Land Code, ss. 97, 99 & 100 — Federal Constitution, arts. 76(4) & 128(1)(a).

Land Law — Collection of revenue — Forfeiture of land — Whether federal legislation valid — Whether ultra vires Federal Constitution — Federal Constitution, art. 76(4) — National Land Code, ss. 97, 99 & 100.

In this case the applicant applied by motion for a declaration that section 100 of the National Land Code enacted by the Federal Parliament is void on the ground that it is *ultra vires* Article 76(4) of the Federal Constitution. Leave was granted to bring the motion and the matter came before the Federal Court. It was argued (a) that as "land revenue" and its collection are not enumerated in clause (4) of Article 76, Parliament does not have power to enact section 100 which deals with the collection of revenue; (b) that even before the National Land Code there were already uniform laws dealing with the collection of land revenue in arrears and that what was effected by sections 97 and 100 was a fundamental change in the law.

Held: (1) clause (4) of Article 76 refers to "land tenure" as a matter with respect to which Parliament may legislate and this is wide enough to cover collection of land revenue;

(2) the impugned provision ensured uniformity of law and practice and therefore is constitutional, regardless of the position previously.

The following authorities were cited in argument:-

(1) *Attorney-General for Ontario* v. *Reciprocal Insurers* [1924] A.C. 328, 337-8.

(2) *South Australia* v. *The Commonwealth* 65 C.L.R. 373, 424, 442.

(3) *Attorney-General for Canada* v. *Attorney-General for Quebec* [1947] A.C. 33, 43.

(4) *Attorney-General, British Columbia* v. *Attorney-General, Canada* [1937] A.C. 368, 376.

(5) *Assam Railways and Trading Co.* v. *Commissioner of Inland Revenue* [1935] A.C. 445, H.L.

(6) *Eastman Photographic Materials Company* v. *Comptroller-General of Patents, Designs and Trade Marks* [1898] A.C. 571, 575.

(7) *River Wear Commissioners* v. *Adamson* (1877) 2 App. Cas. 743, 763.

(8) *Prenn* v. *Simmonds* [1971] 1 W.L.R. 1381.

(9) *Katikiro of Buganda* v. *Attorney-General* [1961] 1 W.L.R. 119.

(10) *Harakchand & Ors.* v. *Union of India & Ors.* A.I.R. 1970 S.C. 1453, 1458, 2nd col., para. 6.

(11) *Great West Saddlery Co. Ltd.* v. *The King*, [1921] 2 A.C. 91, 116, P.C.

(12) *Citizens Insurance Co. of Canada* v. *Parsons* (1881) 7 App. Cas. 96, 103, 105, 106, 107, 108, 110, 113.

(13) *Great Western Saddlery Co. Ltd.* v. *King* [1921] 2 A.C. 91, 100.

(14) *Attorney-General Ontario* v. *Mercer* 8 App. Cas. 767, 772.

(15) *Atma Ram* v. *State of Punjab* A.I.R. 1959 S.C. 519, 524.

(16) *D.N. Banerji* v. *P.R. Mukherjee* A.I.R. 1953 S.C. 58.

(17) *Russell* v. *The Queen* 7 App. Cas. 829.

(18) *O.N. Mohindroo* v. *Bar Council* A.I.R. 1968 S.C. 888.

FEDERAL COURT.

James J. Puthucheary (*Masacorale Upali* and *Lloyd Fernando* with him) for the applicants.

Datuk Haji Abu Mansor bin Ali (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): This is a motion by the applicant company for a declaration that section 100 of the National Land Code ("the Code") enacted by the Federal Parliament is void on the ground that it is *ultra vires* Article 76(4) of the Federal Constitution in that the section deals with a subject with respect to which it has no power to legislate.

This motion comes in the first instance before us rather than the High Court, because when the validity of a law is challenged on the above ground, under Article 128(1)(a) the Federal Court has exclusive original jurisdiction which we can exercise after leave has been granted. Leave was granted on April 28 this year, see [1980] 2 M.L.J. 143.

In the company's petition they pray for two other things as follows:

"(2) in the alternative, for a declaration that section 100 of the Code is void on the ground that it is inconsistent with Article 13; and

(3) for an order that the memorial entered on the Certificate of Grant pursuant to an order made under section 100 be expunged."

Datuk Mansor, counsel for the respondent Johore State Government and the Federal Government ("Go-